

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MELINDA STEVENS PETERS,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

4:13-CV-3082

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's motion for attorney fees (filing 29) pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). Plaintiff has requested fees in the amount of \$7,927.56, representing 44.35 hours of work at \$178.75 an hour.¹ However, after conferring, the parties have agreed instead that an award of \$7,480.33 is reasonable.

The Court has determined that the plaintiff was the prevailing party in this action, as this case was remanded to the Commissioner for further action. The Court further finds that the position of the Commissioner was not substantially justified, for the reasons set forth in the Court's previous Memorandum and Order (filing 27). See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Finally, the Court finds that the motion for fees was filed in a timely fashion,² and that the fees the parties have agreed to are reasonable. Therefore, the plaintiff is entitled to an award of attorney fees in the amount requested. Therefore,

IT IS ORDERED:

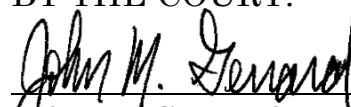
¹ Peters has presented uncontested evidence that a cost-of-living increase is warranted (filing 30-1). See, § 2412(d)(2)(A)(ii); *Johnson v. Sullivan*, 919 F.2d 503, 505 (8th Cir. 1990).

² An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of 42 U.S.C. § 405(g) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See *Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); see also, *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).

1. The plaintiff's motion for attorney fees (filing 29) is granted.
2. By separate document, the Court shall enter judgment for plaintiff and against defendant providing that plaintiff is awarded attorney fees of \$7,480.33.

Dated this 27th day of October, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge